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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,946	10/15/2003	John J. Toben	6006-152-1	7654

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EXAMINER

JIMENEZ, MARC QUEMUEL

ART UNIT PAPER NUMBER

3726

DATE MAILED: 12/10/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/685,946

Applicant(s)

TOBEN ET AL.

Examiner

Marc Jimenez

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 5-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 5-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 27 September 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings were received on 9/27/04. These drawings are approved.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. **Claim 3** is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 3 recites "said key guide is longitudinally formed on each of said first pinch rod, said second pinch rod and said radius rod". This limitation is unclear because in reading the claim, it appears that one key guide is connected to each of the rods. There is no previous recitation that there are a plurality of key guides.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. **Claims 1-3, 5, 10-14, 19, and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Hunter (5,632,174).

Regarding claims 1, 10, 19, and 20, Hunter teaches a roller assembly for processing a substantially planar workpiece **2**, the roller assembly comprising: a first pinch rod **161**; a second pinch rod **162** mounted in opposition to the first pinch rod **161**, the workpiece **2** passing between the first pinch rod **161** and the second pinch rod **162**; a radius rod **163** mounted adjacent to the first pinch rod **161** and the second pinch rod **162**, the radius rod **163** being selectively displaceable (col. 6, lines 18-21 and figure 11) with respect to the first **161** and second **162** pinch rods to contact the workpiece **2** after the workpiece **2** has passed between the first **161** and second **162** pinch rods, the radius rod **163** conferring thereby a predetermined radius of curvature to the workpiece **2**; and a roller **171,191,196** mounted onto one of the first pinch rod **161**, the second pinch rod **162** and the radius rod **163**, the roller **171,191,196** being selectively positionable (col. 7, lines 26-35) along one of the first pinch rod **161**, the second pinch rod **162** and the radius rod **163**.

Regarding claims 2, 3, 11, 12, and 13, note the key **164**.

Regarding claims 5 and 14, note the threaded adjustment assembly **31**.

6. **Claims 1, 5, 10, 14, 19, and 20** are rejected under 35 U.S.C. 102(b) as being anticipated by Frey (4,850,212).

Frey teaches a roller assembly for processing a substantially planar workpiece **1800**, the

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roller assembly comprising: a first pinch rod **860B**; a second pinch rod **810B** mounted in opposition to the first pinch rod **860B**, the workpiece **1800** passing between the first pinch rod **860B** and the second pinch rod **810B**; a radius rod **850A** mounted adjacent to the first pinch rod **860B** and the second pinch rod **810B**, the radius rod **850A** being selectively displaceable (fig. 5) with respect to the first **650B** and second **810B** pinch rods to contact the workpiece **1800** after the workpiece **1800** has passed between the first **860B** and second **810B** pinch rods, the radius rod **850A** conferring thereby a predetermined radius of curvature to the workpiece **1800**; and a roller mounted **850B** onto one of the first pinch rod **860B**, the second pinch rod **810B** and the radius rod **850A**, the roller **850B** being selectively positionable along one of the first pinch rod, the second pinch rod and the radius rod. As shown in fig. 4, the roller **850B** is made of separate elements from the rod **860B** as evident from the hash marked hidden lines. Therefore, the roller **850B** is considered to be “selectively positionable”.

Regarding claim 5, note the threaded adjustment assembly (for example **970A** in fig. 5).

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claims 2-4 and 11-13** are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey in view of Lakin (3,111,742).

Frey teaches the invention cited with the exception of the roller including a key groove for accommodating an outwardly extending key guide provided on the rod.

Lakin teaches a roller **19** including a key groove **23** for accommodating an outwardly extending key guide **11** provided on a rod **10**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Frey with a key groove for accommodating an outwardly extending key guide provided on the rod, in light of the teachings of Lakin, in order to prevent relative rotational movement between the rod and roller.

9. **Claims 6, 7, 15, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey in view of Hahnemann (1,735,243).

Frey teaches an automatic drive means **1240** instead of having a handle assembly for providing the drive force and having a gear train.

Hahnemann teaches a handle assembly **27** for providing a drive force and a gear train **70**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Frey with a handle assembly for providing a drive force, in light of the teachings of Hahnemann, in order to save electricity used to power the roller assembly.

10. **Claims 8, 9, 17, and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Frey in view of Aitken (1,114,426).

Frey teaches the invention cited with the exception of the roller including a radially

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formed aperture.

Aitken teaches a roller **b** with a radially formed aperture **g**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Frey with a radially formed aperture, in light of the teachings of Aitken, in order to securely fasten the roller to the rod.

Regarding claims 10 and 18, Frey/Aitken teach the invention cited with the exception of having threads to secure the roller to the rod. Official notice is taken that it was well known to a person of ordinary skill in the art, at the time of the invention, to have provided the invention of Frey/Aitken with threads in the radially formed aperture, in order to even more securely fasten the assembly including the fastener, rod, and roller.

11. **Claims 6, 7, 15, and 16** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Hahnemann (1,735,243).

Hunter teaches an automatic drive means instead of having a handle assembly for providing the drive force and having a gear train.

Hahnemann teaches a handle assembly **27** for providing a drive force and a gear train **70**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Hunter with a handle assembly for providing a drive force, in light of the teachings of Hahnemann, in order to save electricity used to power the roller assembly.

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12. **Claims 8, 9, 17, and 18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Hunter in view of Aitken (1,114,426).

Hunter teaches the invention cited with the exception of the roller including a radially formed aperture.

Aitken teaches a roller **b** with a radially formed aperture **g**.

It would have been obvious to one of ordinary skill in the art, at the time of the invention, to have provided the invention of Hunter with a radially formed aperture, in light of the teachings of Aitken, in order to securely fasten the roller to the rod.

Regarding claims 10 and 18, Hunter/Aitken teach the invention cited with the exception of having threads to secure the roller to the rod. Official notice is taken that it was well known to a person of ordinary skill in the art, at the time of the invention, to have provided the invention of Hunter/Aitken with threads in the radially formed aperture, in order to even more securely fasten the assembly including the fastener, rod, and roller.

Response to Arguments

13. Applicant's arguments filed 9/27/04 have been fully considered but they are not persuasive.

14. Applicant argues that claim 3 has been amended to depend from claim 1 and to clarify that each of the pinch and radius rods include an outwardly extending key guide. It is noted, however, that claim 3 appears in original form and has not been amended. Therefore, the 35 U.S.C. 112 2nd paragraph rejection to claim 3 is maintained above.

15. In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., "a roller slidably disposed thereon") are not recited in the rejected claim(s) 1-3 and 5-19. Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claims recite "selectively positionable" not "slidably disposed". Frey is considered to meet the limitation "selectively positionable" because as shown in figure 4 of Frey, the roll **850B** is a separate piece from the rod **860B**. The rolls **850B** are selectively positioned to their current locations along the rod **860B**.

16. Applicant argues that because the non-driven rollers have circumferential indentions, this refutes any reading of Frey that the indentations are separate elements from the roller 850B. It is noted that as clearly shown in figure 4 that each of the rollers **800B**, **850B** are separate elements from the rod **810B**, **860B** as indicated by the hidden lines of the rod **810B**, **860B** which extend along the entire length of the rollers **800B**, **850B**. Therefore, Frey is still considered to meet the "selectively positionable" limitation because the rollers **800B**, **850B** could be moved along the rod **810B**, **860B**. For further evidence that Frey is considered to teach separate rollers and rods, see Hahnemann who shows in figure 1, a one piece roller where the roller surface is not a separate piece with the rod. Clearly Frey teaches a separate roller surface and rod. See also figure 4 of Frey at reference number **1050B** which points to a hidden line of a rod. Therefore, the hidden lines of at the center of the rollers **850B** are considered a depiction of the rod **860B**, **810B**.

17. Applicant argues that even assuming if the rollers **850B** are in fact separate elements from the rod **860B**, there is no disclosure in Frey to suggest that they are "selectively

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positionable” along the rod. It is noted, however, that the rollers **850B** have to be positioned on the rod **860B** to their current locations along the rod. Therefore, the rollers **850B** are selectively positioned to their current locations along the rod to provide the appropriate locations of the indentations. When the rollers are first made, the rollers **850B** have to be positioned along the outer surface of the rod **860B** which meet the “selectively positionable” and “selectively and slidably positionable” limitations.

18. Applicant’s arguments on pages 13-15 regarding the rejection of claims 2-4 and 11-13 over Frey in view of Lakin, the rejection of claims 6, 7, 15, and 16 over Frey in view of Hahnemann, and the rejection of claims 8, 9, 17, and 18 over Frey in view of Hahnemann rely on the position that Frey does not disclose “selectively positionable”. See paragraphs 13 and 14 above for the position of the Office regarding the “selectively positionable” limitation.

19. In response to applicant’s arguments that Frey contains no textual disclosure to support the Examiner’s contention of separate elements, it is noted that the drawings are part of the disclosure and clearly show that the roll is a separate element from the rod.


20. It is noted that even if the rollers **850B** are welded or bonded to the rod **860B**, the rollers could still be selectively and slidably “positionable” along the rod **860B** by destructive means. for example, one could use a hammer to move the rollers along the rod **860B** by breaking the bond between the rollers **850B** and rod **860B**.

Contact Information

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marc Jimenez whose telephone number (571) 272-4530. The examiner can normally be reached on Monday-Friday between 5:30 a.m.-2:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 273-4530. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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Patent Examiner
AU 3726

MJ
December 8, 2004